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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. ~~703~~ 33

T. V. WILLIAMS, AS STATE REVENUE COMMISSIONER, PETITIONER,

vs.

STOCKHAM VALVES AND FITTINGS, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR CERTIORARI FILED FEBRUARY 3, 1958
CERTIORARI GRANTED MARCH 17, 1958

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 763

T. V. WILLIAMS, AS STATE REVENUE COMMISSIONER, PETITIONER,

vs.

STOCKHAM VALVES AND FITTINGS, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

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[fol. 1]

IN THE SUPERIOR COURT OF FULTON COUNTY STATE OF GEORGIA

Bill of Exceptions—Filed July 24, 1957

Georgia, Fulton County.

Be It Remembered that on the 17th day of July, 1957, at the July term, 1957, of Fulton Superior Court, before the Honorable Claude D. Shaw, Judge of said Court, then and there presiding, there came on to be tried the case of Stockham Valves & Fittings, Inc., plaintiff, vs. T. V. Williams, as State Revenue Commissioner of the State of Georgia, defendant, being case No. A-55986 in said Court, the same being a suit for refund of taxes alleged by said plaintiff to have been illegally collected from it by the defendant under the Georgia Income Tax Act of 1931, as amended.

Be It Further Remembered that the parties, by written stipulation and agreement, duly filed before said trial, waived a jury trial and consented and agreed that said case be submitted to said Judge without a jury, and for said case and all issues of law and fact therein to be heard and determined by said Judge upon the agreed facts recited in said stipulation, the same constituting all of the evidence in said case.

Said stipulation and agreed facts, omitting the caption and entry of filing, is as follows:

[fol. 2]

IN THE SUPERIOR COURT OF FULTON COUNTY

STIPULATION OF FACTS—July 15, 1957

It is hereby stipulated by and between the parties acting through counsel of record for plaintiff and for defendant in the above styled case that the facts hereinafter set forth shall be accepted as true on the trial of said case without the necessity of introducing any further evidence with respect thereto. This stipulation, however, shall not be

taken to admit the relevancy of the facts hereafter set forth.

1. Plaintiff, Stockham Valves and Fittings, Inc., hereafter referred to as Stockham, is, and was for the calendar years 1952, 1954 and 1955, a Delaware corporation with its principal or home office and its manufacturing plant located in Birmingham, Alabama.

2. Defendant, hereinafter referred to as Commissioner, on April 16, 1953, collected from Stockham the sum of $18.73 as income taxes claimed to be due the State of Georgia for the calendar year 1952.

3. Commissioner, on March 14, 1955, collected from Stockham the sum of $175.00, and on June 9, 1955, the further sum of $314.48, making a total of $489.48, as income taxes claimed to be due the State of Georgia for the calendar year 1954.

4. Commissioner, on April 9, 1956, collected from Stockham the sum of $970.10 as income taxes claimed to be due the State of Georgia for the calendar year 1955.

[fol. 3] 5. On April 9, 1956, Stockham duly filed with Commissioner claims for refund for the aforesaid amounts, and these claims for refund were denied by Commissioner on April 23, 1956.

6. The amounts of the income taxes claimed to be due the State of Georgia and collected by Commissioner as aforesaid, for each of the calendar years indicated, are not in dispute; this is to say that the correctness of the figures used in computing these amounts are conceded by Stockham, but it denies liability therefor.

7. Stockham, since 1905, and including the tax years in question, has been engaged in the business of manufacturing and selling valves and pipe fittings and in promoting the sale and use of the valves and pipe fittings which it manufactured. As stated, its home office and its manufacturing plant were located in Birmingham, Alabama. For the tax years in question, it maintained inventories of its products in established warehouses at Birmingham,

Alabama, Philadelphia, Pennsylvania, Chicago, Illinois, Houston, Texas, and Vernon, California. It maintained established sales service offices at the above locations and also at Cambridge, Massachusetts, New York, New York, Atlanta, Georgia, Pittsburgh, Pennsylvania, San Francisco, California, Washington, D. C., Dallas, Texas, and St. Louis, Missouri. Purchasers of Stockham's valves and pipe fittings were located in all of the United States.

8. The valves and pipe fittings manufactured by Stockham were not of a patented or peculiar design, but were of a standard or common design manufactured and sold throughout the United States by a number of competitors. While not disregarding price as a factor, Stockham sought, in this competition, to emphasize the quality of Stockham products, its good service to local wholesalers and jobbers handling Stockham products, and the development of local demand for Stockham products through sales work among local architects, engineers, contractors and others consulted and in a position to advise concerning the specifying [fol. 4] and use of valves and pipe fittings, including representatives of governmental and industrial users. Stockham did no substantial advertising through national advertising media, but it relied for the most part on its reputation acquired over the years in respect of its products and service and on the personal efforts of its sales representatives stationed in established sales service offices as aforesaid.

9. As a matter of policy and practice during the tax years in question, Stockham made sales only to established local wholesalers and jobbers, and (except for sales to makers of automatic sprinkler systems) made no sales directly to users and installers of valves and pipe fittings. The local wholesalers and jobbers who handled Stockham products, however, were in no way tied in or committed by any type of license, franchise, or other authorized or exclusive dealership arrangement, to the distribution of Stockham products. Any established local wholesaler or jobber, having established credit, was considered as a prospective customer and could buy from Stockham. Established local wholesalers and jobbers who did buy from

Stockham were entirely free to discontinue buying from Stockham at any time and for any reason; they were also free to deal in competitive products and usually did handle one or more lines of competing products.

10. Stockham, during the years in question, made no sales on a consignment basis and maintained no inventories of its own at any place except at the aforesaid warehouses, none of which were located in Georgia. Through its sales representative, it encouraged every local wholesaler and jobber who handled its products to carry a local inventory, and to those local wholesalers and jobbers who did maintain a local inventory of valves, it gave a price concession which was not available to wholesalers and jobbers who did not. Pipe fittings were, however, sold at uniform prices whether or not carried in inventory.

11. All orders for Stockham products were contractually accepted or rejected at the home office of Stockham in Birmingham, Alabama. No representative of the com-
[fol. 5] pany at any sales service office had any authority to, or did, contractually accept or reject any order under any circumstances; the form used by sales representatives expressly so stated. The home office of the company was in teletype communication at all times with each of its sales service offices and with each of its warehouses. Contractual authority and shipping authority was vested exclusively in the home office in Birmingham, Alabama. For the most part, orders were received by mail at the company's home office in Birmingham, directly from local wholesalers and jobbers. Such orders as were received at sales service offices, or by the solicitation of sales representatives working out of sales service offices, were relayed by mail, telephone, or teletype to the home office at Birmingham for contractual acceptance or rejection. Some such orders were rejected by the home office for credit or other reasons.

12. The company's home office at Birmingham communicated directly with local wholesalers and jobbers who had ordered its products in matters of confirmation, credit, collections, routings, shipping dates and other matters

incident to completing transactions to the satisfaction of the parties. Copies of all communications from the home office to a customer were sent to the sales service office serving the territory in which the customer was located so that the Stockham representative there would at all times be apprised of the situation respecting such customer. All sales were made on an "f.o.b. warehouse" basis and were completed there by deliveries to customers or to common carriers consigned to customers.

13. Beginning in 1950 and during the tax years in question, Stockham, in conformity with the policies and practices above, rented and maintained an established sales service office in Atlanta serving a territory comprising Georgia, North Carolina, South Carolina, and parts of Tennessee and Virgina. (sic) Part of Florida was also included in the territory until January 1954. This office was publicly identified as the office of Stockham. The [fol. 6] telephone at this office was listed in the Atlanta telephone directories under the name of Stockham in both the alphabetical and classified business listings. This office was listed in the name of Stockham in Atlanta city directories. The company, on its sales service office letterheads, in its catalogues, discount sheets and on some sales promotional material, listed the fact that it maintained a sales service office in Atlanta.

14. Several competitors of Stockham maintained warehouse stocks of competing products in Atlanta. Through local wholesalers and jobbers who carried local inventories of its products, and through its established sales service office in Atlanta, in direct teletype communication with its home office in Birmingham, and overnight delivery service from Birmingham, Stockham sought to allay its competitors' advantage in this respect.

15. Since 1950, and during the tax years in question, Stockham employed on a regular and full-time basis a woman secretary at the sales office in Atlanta. This secretary functioned, on the basis of her own knowledge and experience and literature furnished by the company, as a source of information concerning Stockham products. She performed stenographic and clerical duties and facilitated

communications between the Stockham home office in Birmingham, Stockham's sales representative when he was out in the territory served by the Atlanta office, and customers, prospective customers, contractors and users of valves and pipe fittings. She operated the teletype machine and sometimes obtained information from Birmingham to give to architects, engineers and other people interested in Stockham products.

16. Since 1950, and during the tax years in question, Stockham employed on a regular and full-time basis a sales representative whose established office was the sales service office in Atlanta and who traveled the territory served by the Atlanta office. Approximately one-third of his normal working time was spent traveling within Georgia and in the Atlanta sales service office. Approximately two-thirds of his normal working time was spent [fol. 7] traveling outside of Georgia. This sales representative was paid a salary plus a commission on the amount of business derived from the territory served by the Atlanta office. In general, the activity of this sales representative was to do everything prompted by his own judgment, training and ability, within the policies and practices of the company, to promote the sale, specifying, ordering and use of Stockham products within the territory served by the Atlanta office.

17. The Atlanta sales representative, as one phase of his activities during the tax years in question, made personal and other calls upon architects, engineers and contractors who were in a position to counsel and advise with respect to specifying and ordering valves and pipe fittings for installation and use. He also made calls upon representatives of governmental and industrial users of valves and pipe fittings for the same purpose. The sales representative did all he could as opportunities presented themselves in this work to demonstrate the superior quality of Stockham products and services. He supplied sales literature and invited technical inquiries concerning technical problems involved in the installation and use of valves and pipe fittings. He solicited no orders from these persons, but informed them of the various local wholesalers

and jobbers through whom the Stockham products could be obtained. He pointed out that orders would be promptly filled by such wholesalers and jobbers either from their local stocks or by means of the prompt service available to them through Stockham's established sales service office in Atlanta and overnight delivery service from Birmingham.

18. The Atlanta sales representative, as another phase of his activities during the tax years in question, called on local wholesalers and jobbers who were buying and handling Stockham products. He did all he could as opportunities presented themselves to check stock needs, to express appreciation for past patronage, to encourage further orders, to supply advertising literature, to promote the idea of the good service available through the estab- [fol. 8] lished sales service office in Atlanta and the overnight delivery service from Birmingham, to keep the local wholesalers and jobbers aware of the work continuously being done to develop a demand for Stockham products, and otherwise to get information and leads that might be developed into more business. If the sales representative received an order, he would relay it to the home office by mail, telephone, or teletype, depending upon its urgency, where such order would be accepted or rejected. Where orders had been previously mailed directly to the home office and were yet undelivered, he undertook to expedite their shipment or to explain their delay.

19. The Atlanta sales representative, as another phase of his activities during the tax years in question, called on established local wholesalers and jobbers who were not buying and handling Stockham products, that is, prospective customers. The sales representative did all he could, as opportunities presented themselves, to demonstrate the superior quality of Stockham products, to promote the idea of the good service available through the established sales service office in Atlanta and the overnight delivery service from Birmingham, and to make the prospective customer aware of the work continuously being done to develop a demand for Stockham products.

20. The Atlanta sales representative was responsible to Stockham's divisional or district sales manager, who

were both located in Birmingham, Alabama. In carrying out the day-to-day activities described in paragraphs 17, 18 and 19 hereof, the sales representative ordinarily operated according to his best judgment and initiative and made such reports as he thought necessary. All of his activities were, however, carried on within the framework of his training with the company and the specific instructions and rules which were issued from time to time by the divisional or district sales manager. He kept the sales manager informed at all times of his whereabouts. The Atlanta sales representative had no authority, nor did he accept any order, bind plaintiff to furnish goods, arrange credit terms or make collections.

[fol. 9] 21. Users of Stockham products occasionally complained that products furnished them were defective in material or workmanship. Such complaints were either called to the attention of the Atlanta sales representative or plaintiff's Birmingham office by the wholesale customer who sold the products. In such cases, the Atlanta sales representative, usually in company with the wholesaler who sold the products, would investigate the alleged defective products and make a report to the Birmingham office. If the complaint was of a serious nature, the chief inspector from the Birmingham office would ordinarily be sent over to assist the sales representative. Stockham considered it important that complaints be handled expeditiously and effectively. In all cases of a complaint, the Atlanta sales representative was required to file a written report with the home office. Replacements of defective products were usually made from the wholesaler's stock at the direction of Stockham and at Stockham's expense. On some occasions the sales representative picked up defective parts and forwarded them to Birmingham for replacement.

22. At no time during the tax years in question did Stockham qualify to do business within the State of Georgia; no officer or director of Stockham was a resident of Georgia; the Atlanta sales representative was a resident of Georgia. The only property owned by Stockham located in Georgia was a small amount of office furniture, equipment, supplies and advertising literature kept at its Atlanta sales service office. The value of this property

was approximately $1,000.00, and its only use was in connection with the activities of the Atlanta office as hereinbefore described. During the tax years in question, rent, salaries and all other expenses of the Atlanta office were paid by checks drawn by officers located at the home office on bank accounts of the company in banks outside the State of Georgia. No employee of Stockham in Georgia had authority, either alone or with any other person, to draw checks upon or make withdrawals from, any bank account of the company. Expense accounts of employees at the Atlanta office were forwarded to the home office where [fol. 10] they were reviewed and paid by checks. Stockham kept no bank account in the State of Georgia. All credit matters were handled at plaintiff's Alabama office where credit information was obtained and all credit questions passed on. All invoices were prepared and mailed from and all collections were made by plaintiff's office in Alabama.

23. For the tax year 1952, the $18.73 collected from Stockham by Commissioner as income taxes claimed to be due the State of Georgia was computed as follows:

Net business income subject to apprortionment (sic)		$3,735,710.96
Finished goods inventory under 92-3113(4)(a):		
Within Georgia	$ -0-	
Total	3,669,644.19	
Ratio		.0
Wages and salaries under 92-3113(4)(b):		
Within Georgia	10,386.84	
Total	5,652,378.61	
Ratio		.00183760
Gross receipts under 92-3113(4)(c):		
Within Georgia	155,373.62	
Total	14,541,301.54	
Ratio		.01068498
Average ratio		.00417419

Net business income apportioned to Georgia		$ 16,633.78
Less Federal income tax apportioned		15,648.02
Net income before contributions		985.76
Contributions		49.29
Net taxable income		936.47
Tax thereon @ 2%		18.73

[fol. 11] 24. For the tax year 1954, the $489.48 collected from Stockham by Commissioner as income taxes claimed to be due the State of Georgia was computed as follows:

Net business income subject to apportionment		$2,859,243.09
Finished goods inventory under 92-3113(4)(a):		
Within Georgia	-0-	
Total	$ 3,991,289.23	
Ratio		.0
Wages and salaries under 92-3113(4)(b):		
Within Georgia	11,307.60	
Total	5,907,469.19	
Ratio		.00191412
Gross receipts under 92-3113(4)(c):		
Within Georgia	163,617.88	
Total	13,964,557.32	
Ratio		.01171665
Average ratio		.00454359
Net business income apportioned to Georgia		$ 12,991.23
Less Federal income tax apportioned		3,626.88
Net income before contributions		9,364.35
Contributions		464.66
Net Taxable income		8,899.69
Tax thereon @ 5½%		489.48

25. For the tax year 1955, the $970.10 collected from Stockham by Commissioner as income taxes claimed to be due the State of Georgia was computed as follows:

Net business income subject to apportionment		$3,655,985.15
Finished goods inventory under 92-3113(4)(a):		
Within Georgia	$ -0-	
Total	5,203,309.71	
Ratio		.0
Wages and salaries under 92-3113(4)(b):		
Within Georgia	14,525.66	
Total	6,346,426.01	
Ratio		.002289

[fol. 12]

Gross receipts under 92-3113(4)(c):		
Within Georgia	$ 294,162.90	
Total	15,872,282.90	
Ratio		.018533
Average ratio		.006941
Net business income apportioned to Georgia		$ 25,376.19
Contributions		1,123.60
Net taxable income		24,252.59
Tax thereon @ 4%		970.10

26. During the years 1952, 1954 and 1955, Stockham paid net income taxes to the following states in the years and amounts indicated and to no others (except Georgia):

Alabama

1952	$ 39,795.08
1954	30,692.59
1955	39,439.48

California

1952	$ 7,675.65
1954	8,431.61
1955	8,335.63

Pennsylvania

1952	$ 3,712.35
1954	3,464.65
1955	4,409.72

27. Stockham paid a franchise tax measured by net income to the District of Columbia as follows:

1952	$ 1,782.84
1954	2,203.81
1955	1,462.07

During the years 1952, 1954 and 1955 Stockham did not pay a franchise tax measured by net income to any other state.

[fol. 13] 28. The ratio of Stockham's net profit to its total gross sales for each of the tax years in question was as follows:

1952	10.2%
1954	9.2%
1955	9.6%

29. For the tax years 1952, 1954, and 1955, the total gross sales derived from the territory served by the Atlanta sales office were as follows:

1952	$811,625.40
1954	397,788.38
1955	555,480.05

30. For the tax years 1952, 1954, and 1955, the total gross receipts within Georgia were:

1952	$155,373.62
1954	163,617.88
1955	294,162.90

It is further stipulated between the parties that the Honorable Claude D. Shaw, Judge of the Superior Court, Atlanta Judicial Circuit, may pass upon all issues of law and fact without the intervention of a jury and render judgment thereon and that this stipulation shall be received by the Court as all the evidence in this case and be made a part of the record in this case.

This 15th day of July, 1957..

John Izard, Jr., W. K. Meadow, Attorneys for Plaintiff.

Spalding, Sibley, Troutman, Meadow & Smith, 434 Trust Co. of Ga. Bldg., Atlanta 3, Georgia.

Eugene Cook, William L. Norton, Jr., Ben F. Johnson, Jr., Attorneys for Defendant.

[fol. 14]

IN THE SUPERIOR COURT OF FULTON COUNTY

JUDGMENT—July 19, 1957

This case came on for trial at the July Term, 1957, of this Court. Counsel John Izard, Jr. and W. K. Meadow appeared for plaintiff, and Assistant Attorneys General William L. Norton, Jr., and Ben F. Johnson, Jr., appeared for defendant. A stipulation was filed in which it was agreed that this Court should pass on all issues of law and fact without the intervention of a jury and that the facts set forth therein should be received by the Court as all the evidence in the case. After consideration of the facts as stipulated and after hearing oral argument of Counsel for both parties,

It Is Hereby Found, Ordered and Adjudged that plaintiff, during the tax years in question, engaged in substantial activities within the State of Georgia for financial profit or gain within the meaning of Code Section 92-3113, as amended by an Act approved February 16, 1950 (Ga. Laws 1950, pp. 299-303); that the taxes collected by defendant from plaintiff under Code Section 92-3102, being taxes on plaintiff's net income fairly apportioned according

to its activities within the State of Georgia, did not constitute a burden on interstate commerce nor were they levied or collected in violation of Due Process under the Federal Constitution, as alleged by plaintiff's petition; that the [fol. 15] aforesaid Code Section 92-3113, as specified by plaintiff's petition, is not unconstitutional for any of the reasons assigned in plaintiff's petition; that said taxes were not erroneously or illegally collected by defendant from plaintiff; that plaintiff is not entitled to any recovery against defendant; that judgment be for defendant; and that the costs of the action be cast against plaintiff.

In open Court this 19 day of July, 1957.

/s/ Claude D. Shaw, Judge, Fulton Superior Court.

IN THE SUPERIOR COURT OF FULTON COUNTY

ASSIGNMENTS OF ERROR

Said judgment was adverse to and contrary to the contentions of the plaintiff in error, Stockham Valves & Fittings, Inc., and it then and there excepted and here and now excepts to said judgment and assigns the same as error and as contrary to law and contrary to the evidence, and says that the Court erred in entering said judgment and in not entering a judgment in favor of plaintiff in error for the full amount claimed by it, upon the following grounds, to wit:

1. Plaintiff in error says that the Court erred, as a matter of law, in entering said judgment, because the collection of said tax, and the portion of the Georgia Income Tax Statute under which said tax was collected, to wit, the first paragraph of Section 92-3113 of the Georgia Code of 1933, as applied to plaintiff in error, under the undisputed facts as agreed to by the parties in the stipulation set out in this bill of exceptions at pages 2 to 13, inclusive, constitutes a burden on and interference with interstate commerce and is, therefore, in violation of the interstate commerce clause of the United States Constitution as set forth in the Georgia Code of 1933, Section 1-125 (3).

[fol. 16] 2. Plaintiff in error further says that the Court erred, as a matter of law, in entering said judgment, because the collection of said tax, and the portion of the Georgia Income Tax Statute under which said tax was collected, to wit, the first paragraph of Section 92-3113 of the 1933 Code of Georgia, as applied to plaintiff in error, under the undisputed facts as agreed to by the parties in the stipulation set out in this bill of exceptions at pages 2 to 13, inclusive, constitutes the taxation of a foreign corporation measured by transactions conducted and concluded entirely without the territorial limits of the State of Georgia and with respect to which no taxable event occurred in the State of Georgia, which is in violation of the due-process clause of the United States Constitution as set forth in the 1933 Code of Georgia, Section 1-815.

3. Plaintiff in error further says that the Court erred, as a matter of law, in entering said judgment, because it denies plaintiff in error the right to recover taxes illegally collected from it on account of income arising from and measured by transactions which were wholly in interstate commerce and, with respect to which, all sales, deliveries, collections and other essential transactions occurred without the State of Georgia, and is, therefore, in violation of the interstate commerce clause of the United States Constitution as set forth in the 1933 Code of Georgia, Section 1-125 (3), and also in violation of the due-process clause of the United States Constitution as set forth in the Georgia Code of 1933, Section 1-815.

4. Plaintiff in error further says that the Court erred, as a matter of law, in entering said judgment for the defendant, for the reason that, under the agreed statement of facts and the undisputed averments in the pleadings, a judgment for plaintiff in error was demanded as a matter of law.

[fol. 17] Plaintiff in error specifies the following portions of the record in this cause, in addition to those set out in this bill of exceptions, as material to a clear understanding of the errors complained of in this bill of exceptions:

1. The petition of the plaintiff, omitting process and return of service;

2. Defendant's answer.

Stockham Valves & Fittings, Inc., the plaintiff in the trial court, names itself herein as the plaintiff in error, and names T. V. Williams, as State Revenue Commissioner of the State of Georgia, the defendant in the trial court, as the defendant in error herein.

And now, within the time provided by law, comes Stockham Valves & Fittings, Inc., plaintiff in error, and tenders this its bill of exceptions and prays that the same may be certified as provided by law and transmitted to the Supreme Court of Georgia, in order that the alleged errors may be considered and corrected.

The Supreme Court of Georgia, and not the Court of Appeals, has jurisdiction of this bill of exceptions, for the reason that the same involves the constitutionality of a statute of the State of Georgia.

Plaintiff in error tenders this bill of exceptions on this the 24th day of July, 1957.

John Izard, Jr., William K. Meadow, Spalding, Sibley, Troutman, Meadow & Smith, Attorneys for Plaintiff in Error.

Post Office Address: 434 Trust Company of Georgia Building, Atlanta, Georgia.

[fol. 20] [File endorsement omitted]

[fol. 22]

IN THE SUPERIOR COURT OF FULTON COUNTY

PETITION—Filed June 14, 1956

The petition of Stockham Valves & Fittings, Inc., herein referred to as plaintiff, respectfully shows:

1.

Plaintiff is, and was at all times hereinafter referred to, a corporation organized and existing under the laws of the State of Delaware.

2.

Plaintiff's principal office and manufacturing plant is located in Birmingham, Alabama.

3.

The defendant herein is T. V. Williams, in his official capacity as State Revenue Commissioner of the State of Georgia.

4.

No officer of plaintiff resides in or maintains his office in the State of Georgia. Plaintiff's chief or highest corporate employee in the State of Georgia during the calendar year 1952 was Hermon E. Warren, Jr. and during the calendar years 1954 and 1955 was Charles L. Burton, each of which employees maintained a sales promotion office in the City of Atlanta, Fulton County, Georgia, which was the only office maintained by plaintiff or any of its employees in the State of Georgia. The Superior Court of Fulton County, Georgia, has jurisdiction of this action.

5.

Defendant, as State Revenue Commissioner, is indebted to plaintiff in the principal sum of $1,478.31, being the amount of income taxes illegally collected by defendant from plaintiff, as herein set out, together with interest on the amounts so collected at the rate of 6% per annum from the date of payment of each such amount, as hereinafter alleged.

6.

On April 16, 1953, defendant collected from plaintiff as income taxes claimed to be due to the State of Georgia for the calendar year 1952 the sum of $18.73. On March 14, 1955, defendant collected from plaintiff the sum of $175.00, and on June 9, 1955, the further sum of $314.48, the total of said sums, to-wit: $489.48, being the amount [fol. 23] of income taxes claimed to be due to the State of Georgia for the calendar year 1954. On April 9, 1956,

defendant collected from plaintiff as income taxes claimed to be due to the State of Georgia for the calendar year 1955 the sum of $970.10. Plaintiff claims interest on each of the amounts herein sued for from the dates of payment, as hereinbefore set out. Defendant claimed the right to collect said sums from the plaintiff under the provisions of the Income Tax Act of Georgia of 1931, as amended. The material portion of said Act, as codified in the 1933 Code at Section 92-3102, levies the following tax upon corporations for the calendar years 1952 and 1954, to-wit:

> "Every domestic corporation and every foreign corporation shall pay annually an income tax equivalent to five and one-half per cent. of the net income from property owned or from business done in Georgia, as is defined in Section 92-3113."

For the calendar year 1955 said Section was amended to levy the following tax on corporations, to-wit:

> "Every domestic corporation and every foreign corporation shall pay annually an income tax equivalent to four per cent of the net income from property owned or from business done in Georgia, as is defined in Section 92-3113."

7.

Within the time allowed by law, to-wit: on the 9th day of April, 1956, plaintiff filed with the defendant claims for refund covering the income taxes illegally collected as herein alleged.

8.

On April 23, 1956, defendant denied plaintiff's claims for refund and refused to refund to plaintiff the taxes for which claims for refund were made, or any part thereof.

9.

The taxes so collected by the defendant from plaintiff were illegally collected and no part thereof was due and owing by plaintiff for the reasons hereinafter set forth.

[fol. 24]

10.

At all times referred to herein, plaintiff was engaged in the business of manufacturing and selling pipe fittings and valves at its manufacturing plant and principal office in the State of Alabama.

11.

During all times referred to herein, plaintiff derived no income from property owned or business done within the State of Georgia, and plaintiff was not at any such time engaged in any activities within the State of Georgia, except as hereinafter set forth, and was not conducting therein any intrastate or local business whatever.

12.

The only property owned by plaintiff in the State of Georgia during the times mentioned herein was a small amount of office furniture; equipment and supplies kept at its sales promotion office in Fulton County, Georgia. The value of said property was approximately $1,000.00, and no income was derived by plaintiff from any of said property.

13.

At all times mentioned herein, plaintiff was not qualified to do business in the State of Georgia and it carried on no activities in Georgia except as mentioned in the following subparagraphs:

(a) Plaintiff was a corporation organized under the laws of the State of Delaware, having its principal office and its manufacturing plant in Jefferson County, Alabama. All of its corporate records were kept and all of its corporate policies and functions were made and performed at plaintiff's Alabama office and plant.

(b) No officers or directors of plaintiff resided in the State of Georgia, and it had no manufacturing plant, warehouse, storage room, or stock of goods within the State of Georgia.

(c) Plaintiff's only employees in the State of Georgia during the calendar year 1952 were Hermon E. Warren and [fol. 25] Anna Marguerite Freeman. Plaintiff's only employees in the State of Georgia during the calendar year 1954 were Charles L. Burton and Anna Marguerite Freeman. From January 1, 1955, through June 10, 1955, Anna Marguerite Freeman was employed by plaintiff in Georgia; from May 23, 1955, until the end of the calendar year, Sally Hancock was employed by plaintiff in the State of Georgia; and during the entire calendar year 1955, Charles L. Burton was employed by plaintiff in the State of Georgia. Plaintiff had no other employees in the State during the calendar year 1955. Misses Hancock and Freeman's duties were entirely clerical. Messrs. Warren and Burton's duties and activities were to keep in touch with contractors and users of pipe fittings and valves and to furnish technical information about petitioner's products and to encourage the specifying of its products in their orders to wholesalers and jobbers who sell petitioner's valves and fittings. Wholesale dealers and jobbers were the only class of customers in Georgia to whom petitioner made any sales. Messrs. Warren and Burton sought to maintain good will among plaintiff's customers and among the contracting and building trades who used plaintiff's products. None of plaintiff's employees within the State of Georgia had authority to nor did they in fact confirm or accept orders, bind plaintiff to furnish goods, arrange credit terms, make collections, or make final arrangements of any kind with any of plaintiff's customers in the State of Georgia.

(d) Plaintiff rented and maintained a small office in Atlanta, Fulton County, Georgia, for the use of its employees mentioned in the preceding subparagraph and as headquarters for its representative, Mr. Warren or Mr. Burton. The territory covered by these representatives and their duties hereinbefore described covered several southeastern states. The office furniture and equipment kept in said office referred to in paragraph 12 constituted the only tangible property owned by plaintiff in the State of Georgia. Rent, salaries, and all other expenses of the

Atlanta office were paid by checks drawn by officers located at plaintiff's Alabama office on plaintiff's accounts in banks outside the State of Georgia. No employee of plaintiff in [fol. 26] Georgia had authority, either alone or with any other person, to draw checks upon, or make withdrawals from any bank account of plaintiff. Expense accounts of employees at the Atlanta office were forwarded to plaintiff's Alabama office where they were reviewed and paid by checks. Plaintiff kept no bank account in the State of Georgia.

(e) The functions and activities of the employees of plaintiff at its Atlanta office related to the States of Georgia, North Carolina, South Carolina, and parts of Tennessee, Virginia, and Florida, this territory being covered by the Atlanta, Georgia, office of plaintiff.

(f) All ordered or offers to purchase goods from plaintiff which were received at its Georgia office or in any other manner in the State of Georgia for transmittal to plaintiff's aforesaid office in Alabama were subject to approval and acceptance at said office, or at one of plaintiff's warehouses located outside the State of Georgia, and the acknowledgment of receipt of said offer expressly so stated.

In all cases where ordered or offers to purchase goods from plaintiff were accepted by it as above alleged, the goods were shipped in interstate commerce by plaintiff from its factories or warehouses without the State of Georgia to the purchasers by common carrier f.o.b. shipping point.

(g) All credit matters were handled at plaintiff's Alabama office where credit information was obtained and all credit questions passed on. All invoices were prepared and mailed from and all collections were made by plaintiff's office in Alabama.

14.

For the reasons herein set out, plaintiff alleges that it did not carry on in Georgia any operations or activities rendering it liable to pay to the State of Georgia income

taxes, and that it did not have or receive any net income from property owned or business done in Georgia during the years 1952, 1954 or 1955, and all of said taxes herein referred to were illegally collected and should be refunded to plaintiff, together with interest thereon at the rate of 6% per annum for the following reasons:

[fol. 27] (a) The following paragraph of the Georgia Income Tax Statute, under which statute said tax was collected, to-wit, the first paragraph of Section 92-3113 of the 1933 Code of Georgia, as amended by Act of the General Assembly of Georgia approved February 16, 1950 (Georgia Laws 1950, pages 299-303), and which reads as follows:

> "The tax imposed by this law shall apply to the entire net income, as herein defined, received by every corporation, foreign or domestic, owning property or doing business in this State. Every such corporation shall be deemed to be doing business within this State if it engages within this State in any activities or transactions for the purpose of financial profit or gain, whether or not such corporation qualifies to do business in this State, and whether or not it maintains an office or place of doing business within this State, and whether or not any such activity or transaction is connected with interstate or foreign commerce,"

is illegal and invalid and in violation of the Fourteenth Amendment of the Constitution of the United States (Article XIV, Section 1, of the Constitution of the United States; Code of Georgia of 1933, Section 1-815), which among other things provides:

> "• • • nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.",

because said part of said statute attempts to authorize the State of Georgia to tax a foreign corporation which is not actually present in the State and is not actually doing

business therein, and with respect to which no taxable event occurs in Georgia, and to measure such tax by sales and transactions conducted and concluded entirely without the territorial limits of the State of Georgia, which constitutes a denial of due process of law under the Fourteenth Amendment of the Constitution of the United States above referred to.

[fol. 28] (b) The following part of the Georgia Income Tax Statute, under which statute said tax was collected, to-wit, the first paragraph of Section 92-3113 of the 1933 Code of Georgia, as amended by Act of the General Assembly of Georgia approved February 16, 1950 (Georgia Laws 1950, pages 299-303), which reads as follows:

> "The tax imposed by this law shall apply to the entire net income, as herein defined, received by every corporation, foreign or domestic, owning property or doing business in this State. Every such corporation shall be deemed to be doing business within this State if it engages within this State in any activities or transactions for the purpose of financial profit or gain, whether or not such corporation qualifies to do business in this State, and whether or not it maintains an office or place of doing business within this State, and whether or not any such activity or transaction is connected with interstate or foreign commerce,"

is illegal and void and in violation of Article 1, Section VIII, Paragraph III, of the Constitution of the United States (Code of Georgia of 1933, Section 1-125 (3)), which provides as follows:

> "The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;".

for the reason that said statute attempts to authorize the State of Georgia to levy an income tax on income derived from sales consummated by plaintiff entirely in the course of interstate commerce and in connection with which no element or part of said sale occurs in the State of Georgia,

and is a direct interference with and a burden on interstate commerce in contravention and violation of the commerce clause of the Federal Constitution quoted above.

[fol. 29] 15.

Plaintiff alleges that the collection of said taxes and the taxation by the State of Georgia of income derived from sales and transactions occurring entirely beyond the territorial limits of the State of Georgia is illegal and invalid and in violation of the Fourteenth Amendment of the Constitution of the United States (Article XIV, Section 1, of the Constitution of the United States; Code of Georgia of 1933, Section 1-815), which among other things provides:

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.",

for the reason that the State of Georgia has no right, power or authority to interfere in any way with or to regulate or tax income derived from sales conducted and consummated entirely without the territorial limits of the State of Georgia, and the taxation of such transactions constitutes a denial of due process of law under the Constitutional provisions above quoted.

16.

The collection of said taxes by defendant was illegal and unconstitutional for the reason that under the facts herein alleged it is an unconstitutional interference with and burden on interstate commerce and is in violation of Article I, Section VIII, Paragraph III, of the Constitution of the United States (Code of Georgia of 1933, Section 1-125 (3)), which provides as follows:

> "The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;",

for the reason that the collection of income taxes by the State of Georgia on income derived from sales consummated by plaintiff entirely in the course of interstate commerce, and entirely without the State of Georgia, and in connection with which no element or part of said sale occurs in the State of Georgia, is a direct interference with and burden on interstate commerce.

[fol. 30] Wherefore, plaintiff prays for judgment against defendant in his official capacity as State Revenue Commissioner in the amount of $1,478.31, with interest thereon from the date of payment, as provided by law, together with the costs of this action, and that process issue requiring said defendant to be and appear on the appearance day of this case, as fixed by the service of this petition, to answer this complaint.

/s/ White, Bradley, Arant, All & Rose.

P. O. Address: 2100 Comer Building, Birmingham 3, Alabama.

/s/ John Izard, Jr., W. K. Meadow, Spalding, Sibley, Troutman, Meadow & Smith, Attorneys for Plaintiff.

P. O. Address: 434 Trust Company of Georgia Building, Atlanta 3, Georgia.

[File endorsement omitted]

[fol. 31]

IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA

[Title omitted]

ANSWER—Filed July 12, 1956

Now comes T. V. Williams, as State Revenue Commissioner of the State of Georgia, Defendant, and files this his answer to the Plaintiff's petition and respectfully shows to the Court:

1.

The Defendant admits the facts alleged in Paragraph 1 of the Plaintiff's petition.

2.

The Defendant admits the facts alleged in Paragraph 2 of the Plaintiff's petition.

3.

The Defendant admits the facts alleged in Paragraph 3 of the Plaintiff's petition.

4.

For want of sufficient information, the Defendant can neither admit nor deny the facts alleged in Paragraph 4 of the Plaintiff's petition except that Defendant admits that the Superior Court of Fulton County, Georgia has jurisdiction of this action.

5.

The Defendant denies the facts alleged in Paragraph 5 of the Plaintiff's petition.

6.

The Defendant admits the facts alleged in Paragraph 6 of the Plaintiff's petition.

7.

The Defendant admits the facts alleged in Paragraph 7 of the Plaintiff's petition.

8.

The Defendant admits the facts alleged in Paragraph 8 of the Plaintiff's petition.

[fol. 32]

9.

The Defendant denies the facts alleged in Paragraph 9 of the Plaintiff's petition.

10.

For want of sufficient information, the Defendant can neither admit nor deny the facts alleged in Paragraph 10 of the Plaintiff's petition.

11.

For want of sufficient information, the Defendant can neither admit nor deny the facts alleged in Paragraph 11 of the Plaintiff's petition.

12.

For want of sufficient information, the Defendant can neither admit nor deny the facts alleged in Paragraph 12 of the Plaintiff's petition.

13.

For want of sufficient information, the Defendant can neither admit nor deny the facts alleged in Paragraph 13 of the Plaintiff's petition.

14.

The Defendant denies the facts alleged in Paragraph 14 of the Plaintiff's petition.

15.

The Defendant denies the facts alleged in Paragraph 15 of the Plaintiff's petition.

16.

The Defendant denies the facts alleged in Paragraph 16 of the Plaintiff's petition.

Wherefore, the Defendant having fully answered Plaintiff's petition prays that said petition be dismissed, judg-

ment awarded the Defendant, and all costs of the action charged to the Plaintiff.

[fol. 33] /s/ Eugene Cook, The Attorney General, /s/ William L. Norton, Jr., Assistant Attorney General, /s/ Ben F. Johnson, Jr., Assistant Attorney General, Attorneys for Defendant.

132 State Judicial Bldg., Atlanta, Ga.

[File endorsement omitted]

[fol. 34] Certificate of Service (omitted in Printing).

[fol. 36]

IN THE SUPREME COURT OF GEORGIA

Case No. 19838

STOCKHAM VALVES & FITTINGS, INC.,

v.

WILLIAMS, State Revenue Commissioner.

DECISION—November 8, 1957

By the Court:

The Georgia Income Tax Statute (Code, Ann. Supp., § 92-3113) as applied to the plaintiff, a non-resident corporation with its home office and manufacturing plant outside of the State of Georgia—which maintained only a sales-service office in this state, which was used as headquarters by one of its sales representatives, who spent about one-third of his time in that office or traveling within this State, and in which office a small amount of office furniture, valued at approximately $1,000, was maintained, and one woman secretary was employed, and where the sales representative carried on the ordinary duties of a salesman in Georgia calling on customers and prospective customers, but no orders were accepted within the State

of Georgia, and all sales were made on an "f.o.b. warehouse" basis and were completed at warehouses outside of the state by deliveries to customers or to common carriers consigned to customers—violates both the commerce and due-process clauses of the Federal Constitution (Code §§ 1-125 (3), 1-815), and the trial court erred in sustaining its validity as against such attacks.

[fol. 37] This was an action brought by Stockham Valves & Fittings, Inc., (hereinafter referred to as the plaintiff) against T. V. Williams as Revenue Commissioner of the State of Georgia, to recover income taxes paid by the plaintiff under protest to the state for the calendar years 1952, 1954, and 1955, assessed against the plaintiff under the following Georgia Income Tax Statutes: Code (Ann. Supp.) § 92-3102, which provides that "Every domestic corporation and every foreign corporation shall pay annually an income tax equivalent to four percent of the net income from property owned or from business done in Georgia, as defined in section 92-3113"; and Code (Ann. Supp.) § 92-3113, which provides that "The tax imposed by this law shall apply to the entire net income, as herein defined, received by every corporation, foreign or domestic, owning property or doing business in this State. Every such corporation shall be deemed to be doing business within this State if it engages within this State in any activities or transactions for the purpose of financial profit or gain, whether or not such corporation qualifies to do business in this State, and whether or not it maintains an office or place of doing business within this State, and whether or not any such activity or transaction is connected with interstate or foreign commerce." Claims for refund of the taxes paid having been denied by the defendant, the present suit was brought.

The plaintiff contends that all of its activities within the State of Georgia are a part of and inseparable from interstate commerce, and that any income tax assessed against the plaintiff is a direct burden on such commerce and violates the commerce clause of the Federal Constitution (Code § 1-125 (3)); that the fact that the plaintiff maintains one sales-service office in Georgia and one of its sales representatives spends one-third of his time in

Georgia does not make the plaintiff present in the state in any substantial sense, and an attempt to subject it to [fol. 38] an income tax violates the due-process clause of the Federal Constitution (Code § 1-815). No question is raised by the plaintiff as to the reasonableness of the apportionment of its net income to Georgia under the prescribed statutory apportionment formula or to the amount of taxes, if liable; but the plaintiff contends that the state is without jurisdiction to impose a net income tax upon a foreign corporation engaged within Georgia in exclusively interstate commerce.

The facts were stipulated, and the issue was submitted to the trial judge without a jury; and to the judgment upholding the validity of the statute and the tax the plaintiff excepts.

From the stipulation of facts it appears that the plaintiff is a corporation organized under the laws of Delaware with its principal or home office and its manufacturing plant located in Birmingham, Alabama. Since 1905, and including the tax years in question, it has been engaged in the business of manufacturing and selling valves and pipe fittings and in promoting the sale and use of valves and pipe fittings which it manufactured. For the tax years in question, it maintained inventories of its products in established warehouses at Birmingham, Ala., Philadelphia, Pa., Chicago, Ill., Houston, Tex., and Vernon, Calif. It maintained established sales-service offices at the foregoing locations and also at Cambridge, Mass., New York, N. Y., Atlanta, Ga., Pittsburgh, Pa., San Francisco, Calif., Washington, D. C., Dallas, Tex. and St. Louis, Mo. Purchasers of plaintiff's valves and pipe fittings were located in all the United States.

As a matter of policy and practice, during the tax years in question, the plaintiff made sales only to establish (sic) local wholesalers and jobbers and (except for sales to makers of automatic-sprinkler systems) made no sales directly to users and installers of valves and pipe fittings. The local [fol. 39] wholesalers and jobbers who handled the plaintiff's products, however, were in no way tied in or committed by any type of license, franchise, or other authorized or exclusive dealership arrangement, to the distribution

of the plaintiff's products. Any established local wholesaler or jobber, having established credit, was considered as a prospective customer and could buy from the plaintiff. Established local wholesalers and jobbers who did buy from the plaintiff were entirely free to discontinue buying from it at any time and for any reason; they were also free to deal in competitive products and usually did handle one or more lines of competing products.

The plaintiff, during the years in question, made no sales on a consignment basis and maintained no inventories of its own at any place except at the aforesaid warehouses, none of which were located in Georgia. Through its sales representative, it encouraged every local wholesaler and jobber who handled its products to carry a local inventory, and to those local wholesalers and jobbers who did maintain a local inventory of valves, it gave a price concession, which was not available to wholesalers and jobbers who did not. Pipe fittings were, however, sold at uniform prices whether or not carried in inventory.

All orders for the plaintiff's products were contractually accepted or rejected at the home office of the plaintiff in Birmingham, Alabama. No representative of the company at any sales-service office had any authority to, or did, contractually accept or reject any order under any circumstances. Contractual authority was vested exclusively in the home office in Birmingham, Alabama. For the most part, orders were received by mail at the company's home office in Birmingham directly from wholesalers and jobbers. Such orders as were received at sales-service offices, or by [fol. 40] the solicitation of sales representatives working out of sales-service offices, were relayed by mail, telephone (sic) or teletype to the home office at Birmingham for contractual acceptance or rejection. Some such orders were rejected by the home office for credit or other reasons.

The plaintiff had no plant or warehouse in Georgia. All sales were made on an "f.o.b. warehouse" basis, and were completed at the plant or warehouse by deliveries to customers or to common carriers consigned to customers.

Since 1950, and during the tax years in question, the plaintiff maintained a sales-service office in Atlanta. One of its sales representatives used this office as his head-

quarters. He worked in a territory which included Georgia, North Carolina, South Carolina, and parts of Tennessee and Virginia. Part of Florida was also included in his territory until 1954. This representative spent approximately one-third of his time at the Atlanta sales office or traveling in the State of Georgia. The other two-thirds of his time was spent traveling outside of Georgia. He was paid a salary plus a commission on the amount of business derived from the territory served by the Atlanta office.

The plaintiff also employed at its sales-service office in Atlanta a full-time woman secretary. She functioned on the basis of her own knowledge and experience and literature furnished by the company as a source of information concerning the plaintiff's products. She performed stenographic and clerical duties and facilitated communications between the plaintiff's home office in Birmingham, the plaintiff's sales representative when he was out in the territory, and customers, prospective customers, contractors, and users of the plaintiff's products. She operated the teletype machine and sometimes obtained information from Birmingham to give to architects, engineers, or other [fol. 41] people interested in the plaintiff's products.

The Atlanta sales-service office was listed in the Atlanta telephone directories in the plaintiff's name in both the alphabetical and classified business listings. The office was listed in the plaintiff's name in the Atlanta city directories. The company, on its sales-service office letterheads, in its catalogues and discount sheets, and on some promotional material, listed the fact that it maintained a sales-service office in Atlanta. A small amount of office furniture was maintained there of the approximate value of $1,000. The representative carried on the ordinary duties of a salesman in Georgia. No orders were, however, accepted within the State of Georgia. All sales were completed at warehouses outside of the State by deliveries to customers or to common carriers consigned to customers. All such sales took place outside of Georgia.

At no time during the tax years in question did the plaintiff qualify to do business within the State of Georgia; no officers or director of the plaintiff was a resident of

Georgia; the Atlanta sales representative was a resident of the State. During the tax years in question, rent, salaries, and all other expenses of the Atlanta office were paid by check drawn by officers located at the home office on bank accounts of the company in banks outside the State of Georgia. No employee of the plaintiff in Georgia had authority, either alone or with any other person, to draw checks upon or make withdrawals from any bank account of the company. Expense accounts of employees at the Atlanta office were forwarded to the home office, where they were reviewed and paid by checks. The plaintiff kept no bank account in the State of Georgia. All credit matters were handled at the plaintiff's Alabama office, where credit information was obtained and all credit [fol. 42] questions were passed on. All invoices were prepared and mailed from and all collections were made by the plaintiff's office in Alabama. No employee of the plaintiff in Georgia had authority to accept nor did any employee accept any order, bind plaintiff to furnish goods, arrange credit terms, or make collections.

Hawkins, Justice. (After stating the foregoing facts.) That the decision of the questions here presented is not without difficulty, is pointed out by the Supreme Court of the United States in the recent decision in Freeman v. Hewit, 329 U. S. 249, 252 (67 Sup. Ct. 274, 91 L. ed. 265), where it is said: "The history of this problem is spread over hundreds of volumes of our Reports. To attempt to harmonize all that has been said in the past would neither clarify what has gone before nor guide the future. Suffice it to say that especially in this field opinions must be read in the setting of the particular cases and as the product of preoccupation with their special facts." In LeLoup v. Port of Mobile, 127 U. S. 640, 648 (8 Sup. Ct. 1380, 32 L. ed. 311), the Supreme Court stated the fundamental limitations of the commerce clause on state taxation as follows: "In our opinion such a construction of the Constitution leads to the conclusion that no State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects

of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, and the reason is that such taxation is a burden [fol. 43] on that commerce, and amounts to a regulation of it, which belongs solely to Congress." In Forrester v. Culpepper, 194 Ga. 744, 748 (22 S. E. 2d 595), this court quoted with approval from Interstate Bond Co. v. State Revenue Com., 50 Ga. App. 744, 751 (179 S. E. 559), the following: "The general view is that an income tax is not a property tax, but more in the nature of an excise tax." In Alpha Portland Cement Co. v. Massachusetts, 268 U. S. 203, 218 (45 Sup. Ct. 477, 69 L. ed. 916, 44 A. L. R. 1219), a Massachusetts excise tax, based on the proportion of a company's assets employed in the state and the proportion of its net income derived in the state, was held unconstitutional as applied to a taxpayer engaged exclusively in interstate commerce. The taxpayer maintained a branch sales office in Massachusetts, which was used as headquarters by its traveling salesmen. It owned office equipment there, and its local manager handled petty cash items for the company through a bank account maintained in his own name. The court found that all of the taxpayer's activities were an integral part of interstate commerce, and therefore held the excise unconstitutional. The court said: "The local business of a foreign corporation may support an excise measured in any reasonable way, if neither interstate commerce nor property beyond the state is taxed. Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113, approved such an excise measured by income reasonably attributed to intrastate business; but nothing there said was intended to modify well-established principles. It must be read with the essential facts in mind. Local business was a sufficient basis for the excise, and there was no taxation of interstate commerce or property beyond the state." In Spector Motor Service v. O'Connor, 340 U. S. 602, 609 (71 Sup. Ct. 508, 95 L. ed. 573), it is said: "This court heretofore has struck down, under the Commerce Clause, state taxes upon the privilege of carrying on a business that was *exclusively* interstate [fol. 44] in character. The constitutional infirmity of such a tax persists no matter how fairly it is apportioned to business done within the state."

From the foregoing statement of facts it appears without dispute that the plaintiff was engaged exclusively in interstate commerce insofar as its activities in Georgia are concerned; and in Atlantic Lumber Co. v. Commissioner of Corporations and Taxation of Massachusetts, 298 U. S. 553, 555 (56 Sup. Ct. 887, 80 L. ed. 1328), it was held: "If appellant did nothing but transact interstate business, the tax would constitute a burden upon that commerce, and could not stand under the commerce clause of the Constitution."

Counsel for the defendant contend that a tax on net income does not stand upon the same basis and is not the equivalent of a license, occupation, franchise, or privilege tax on interstate commerce; but, as previously pointed out, we have held that an income tax is in the nature of an excise tax, and in the footnote added to the dissenting opinion written by Mr. Justice Reed in Interstate Oil Pipe Line Co. v. Stone, 337 U. S. 662, 677 (69 Sup. Ct. 1264, 93 L. ed. 1613), it is said: "Since we perceive no difference for the purposes of this case between franchise, privilege, and excise taxes, insofar as they are exacted for the privilege of doing or the doing of interstate business, we have treated them as identical as far as their validity under the commerce clause is concerned. In Ozark and Anglo-Chilean Nitrate the taxes were called franchise taxes; In Alpha it was labeled an excise tax." In Dennison Mfg. Co. v. Wright, 156 Ga. 789 (3-b) (120 S. E. 120), this court held: "Where a foreign corporation rents and maintains an office in this State, with a stock of samples and a force of office employees and traveling salesmen, merely [fol. 45] to obtain orders in this State and other States, subject to approval by its home office, for its goods to be shipped directly to its customers from its home State, such an arrangement is part of its interstate commerce, and not subject to a local excise tax."

We are also of the opinion that the income-tax statute here under consideration, as applied to the plaintiff, violates the due-process clause of the Federal Constitution. We take it that no one will question the fact that a state may not tax activities carried on outside its borders without violating this provision of the Constitution. The

question in every such case is whether such a connection exists between a business and the taxing state as to permit the imposition of a general income tax on a portion of the net income of the business; and in Wisconsin v. J. C. Penney Co., 311 U. S. 435, 444 (61 Sup. Ct. 246, 85 L. ed. 267), the Supreme Court said: "That test is whether property was taken without due process of law, or, if paraphrase we must, whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state. The simple but controlling question is whether the state has given anything for which it can ask return." See also Miller Brothers Co. v. Maryland, 347 U. S. 340, 344 (74 Sup. Ct. 535, 98 L. ed. 744), where the foregoing rule was applied to facts quite similar to those in the instant case. There the court said: "The question here is whether this vendor, by its acts or course of dealing, has subjected itself to the taxing power of Maryland or whether it has afforded that State a jurisdiction or power to create this collector's liability." After referring to its previous decisions, that court said: "Our decisions are not always clear as to the grounds on which a tax is supported, especially where more than one exists; nor are all of our pronouncements during the experimental [fol. 46] period of this type of taxation consistent or reconcilable. A few have been specifically overruled, while others no longer fully represent the present state of the law. But the course of decisions does reflect at least consistent adherence to one time-honored concept; that due process requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax."

This court, in Redwine v. Dan River Mills, 207 Ga. 381 (61 S. E. 2d 771), held that activities more extensive than those carried on by the plaintiff did not constitute "doing business" within the meaning of the income-tax act then in effect; and in Suttles v. Owens-Illinois Glass Co., 206 Ga. 849 (59 S. E. 2d 392), it was held that accounts growing out of similar activities in Georgia did not have a tax situs in Georgia. See also Norton Co. v. Department of Revenue of Illinois, 340 U. S. 534 (71 Sup. Ct. 377, 95 L. ed. 517).

We hold, therefore, that as applied to the plaintiff the Georgia Income Tax Act violates both the commerce and due-process clauses of the Federal Constitution, and the trial court erred in rendering judgment against the plaintiff. The cases mainly relied upon by the defendant, namely, U. S. Glue Co. v. Town of Oak Creek, 247 U. S. 321 (38 Sup. Ct. 499, 62 L. ed. 1135); Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113 (41 Sup. Ct. 45, 65 L. ed. 165); Atlantic Coast Line R. Co. v. Doughton, 262 U. S. 413 (43 Sup. Ct. 620, 67 L. ed. 1051); Memphis Natural Gas Co. v. Beeler, 315 U. S. 649 (62 Sup. Ct. 857, 86 L. ed. 1090); West Publishing Co. v. McColgan, 27 Cal. 2d 705 (166 Pac. 2d 861), and others, are clearly distinguishable on their facts. In those cases the taxpayers were either residents of the taxing State, or were carrying on within the State extensive intrastate as well as interstate business, or else the statements therein made which would [fol. 47] seem to conflict with the rulings here made were obiter. In Freeman v. Hewit, 329 U. S. 249, 255 (67 Sup. Ct. 274, 91 L. ed. 265), the Supreme Court of the United States recognized that the taxing power permitted by the U. S. Glue Company case, supra, was applicable only to residents of a State. It was said: "It [a State] can tax the privilege of residence in the State and measure the privilege by net income, including that derived from interstate commerce." The Underwood Typewriter decision, supra, was explained and limited in Alpha Portland Cement Co. v. Massachusetts, 268 U. S. 203, 218 (45 Sup. Ct. 477, 69 L. ed. 916, 44 A. L. R. 1219), where the court said: "The local business of a foreign corporation may support an excise measured in any reasonable way, if neither interstate commerce nor property beyond the state is taxed. Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113, approved such an excise measured by income reasonably attributed to intrastate business; but nothing there said was intended to modify well-established principles." The dictum in the Beeler case, supra, was expressly disapproved as such by the Supreme Court in Spector Motor Service v. O'Connor, 340 U. S. 602, 609 (71 Sup. Ct. 508, 95 L. ed. 573), in the following language: "Any suggestion in that opinion as to the possible validity

of such a tax if applied to earnings derived wholly from interstate commerce is not essential to the decision in the case."

As already pointed out by the United States Supreme Court, its decisions dealing with the problem here presented are spread through hundreds of volumes of its reports, and all of its pronouncements are not consistent or reconcilable. To attempt to harmonize all that has been said, would neither clarify what has gone before nor guide the future, and to undertake here to point out the distinguishing features of each of the numerous decisions [fol. 48] would only consume unnecessary time and space.

Judgment reversed. All the Justices concur except Head, J., who dissents.

[fol. 49]

IN THE SUPREME COURT OF GEORGIA

JUDGMENT—November 8, 1957

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered: Stockham Valves & Fittings, Inc., v. T. V. Williams, State Revenue Comr. This case came before this court upon a writ of error from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the judgment of the court below be reversed for the reason stated in the opinion this day filed. All the Justices concur except Head, J., who dissents.

[fol. 59]

IN THE SUPREME COURT OF GEORGIA

ORDER DENYING MOTION FOR REHEARING—November 26, 1957

The Honorable Supreme Court met pursuant to adjournment. The following order was passed: Stockham Valves & Fittings, Inc., v. T. V. Williams, State Revenue Comr.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied. Head, J., dissents.

[fol. 63] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 64]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—March 17, 1958

The petition herein for a writ of certiorari to the Supreme Court of the State of Georgia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.